

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

IAS – Sri L. Premachandra Reddy, IAS – Change of Date of Birth as 28.03.1956 instead of 10.06.1954 – Orders – Issued.

GENERAL ADMINISTRATION (SPL.A) DEPARTMENT

G.O.Rt.No. 3974

Dated:06 .09.2013

Read the following:

1. From Sri L. Premachandra Reddy, IAS, representation, Dated: 13.10.2008.
2. G.O.Rt.No.1445, Agriculture Cooperation (COOP-II) Department, Dated: 05.12.2009.
3. Hon'ble CAT, Order dated: 26.04.2013 in O.A. No.268/2010.
4. G.O.Rt.No.3281, G.A. (Spl.A) Dept., Dated: 24.07.2013.
5. Enquiry Report Dated: 14.08.2013 of Sri V. Bhaskar, IAS., Spl. Chief Secretary to Govt., Finance Department.
6. From the Director (Services), DoP & T, GOI, New Delhi, Lr.No. 22011/3 /2012- AIS – II, Dated: 22.08.2013.

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ORDER:

Sri L. Premachandra Reddy, IAS, who joined the service as Deputy Registrar of Cooperative Societies on 16.11.1978 on selection by AP Public Service Commission, was appointed to Indian Administrative Service, with effect from 05.06.1996.

2. The Member of Service in his representation first read above has stated that he was born on 28.03.1956 at MLL Hospital, Madanapalle and the same was registered in Madanapalle Municipality with registration No.49, dated: 29.03.1956. The Member of Service has stated that his date of birth was erroneously recorded in the SSC School record as 10.06.1954. The Member of Service has stated that he was appointed as Deputy Registrar of Cooperatives and he reported for training in the Office of the Divisional Cooperative Officer, Anantapur, Andhra Pradesh on 16.11.1978 and submitted a declaration regarding his date of birth to the Government on 29.11.1978, which is within one month from the date of his joining service as stipulated in G.O.Ms.No.18, Finance & Planning (Fin. Wing.FR.I) Department, Dated: 09.01.1978 and as per the above G.O. Government have to take a decision within four months from the date of his joining Government Service. He has enclosed copies of documentary evidence in support of his claim.

3. In G.O. Second read above the Agriculture and Cooperation Department has rejected the request of Sri L. Premachandra Reddy, IAS., keeping in view Rule 5 of AP Employment (Recording & Alteration of Date of Birth) Rules, 1984 and various Judicial pronouncements of the Hon'ble Supreme Court of India, as there is no scope to consider the request of the Officer for alteration of his date of birth at this belated stage.

4. Sri L. Premachandra Reddy, IAS., aggrieved by the above orders, has filed O.A. No.268/2010 in the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad. The Hon'ble CAT while considering the O.A. has dealt with various contentions of Sri L. Premachandra Reddy and averments of respondents (the Government) and held that:

- a) the main contention of the applicant as per the O.A. is that immediately after joining the service within the prescribed period he has made an application as required under G.O.Ms.No.18, Dt. 09.01.1978 and the Government was supposed to take decision within four months and as such it has to be accepted that the declaration given by the applicant for change of date of birth is deemed to have been accepted. The fact that the applicant has originally given his date of birth as 10.06.1954 is not in dispute. The contention of the applicant that immediately after joining service, on 16.11.1978 he gave declaration on 25.11.1978 of his correct date of birth as 28.03.1956 and requested the appropriate authority to record his date of birth in the service record has not been denied by the respondents. As such it has to be accepted that the applicant gave declaration dated 25.11.1978 stating that his date of birth is 28.03.1956 and requested to record the same.
- b) G.O.Ms.No.18, Dt.09.01.1978 deals with procedure regarding recording of Date of Birth in the service record of all categories of Government servants who are appointed to Government service. As per this G.O. the Government servant, shall within one month of joining the service make a declaration about his date of birth and within four months the Government shall pass an order, after making an enquiry with regard to the correctness of the claim and it further provides that in case the declaration made by the applicant is not acceptable an opportunity has to be given to the applicant to hear and consider any evidence which is adverse to him before an order is made. Thus in the present case as there is no denial about the applicant making declaration within one month of joining service with regard to his correct date of birth being 28.03.1956 the Government ought to have passed order within four months as contemplated in clause (ii) and that could not have been adverse to the applicant as no adverse order could be passed without giving an opportunity to the applicant. There is no dispute that the applicant was not given any opportunity. When there is no communication of the order within four months of his giving application it has to be prima facie deemed that the claim of the applicant has been accepted.
- c) the case of the applicant cannot be considered as pending case under amended rule 5 of of A.P. Employment (Recording and Alteration of Date of Birth) Rule, 1984 because in 1978 the applicant made application for alteration of date of birth and within four months the respondents ought to have passed an order and in case the same is not passed it has to be deemed that the order in favour of the applicant was passed and the matter was closed.
- d) the decision of Division Bench of Hon'ble High Court of Andhra Pradesh in the case of Y. Anjaneyulu vs. Andhra Bank, Hyderabad reported in 2005(5) ALD 573 (DB) is not applicable to the fact of the present case, as in that case of Andhra Bank employees there was no provision like G.O.Ms.No.18 of 1978 which contemplates procedure for correction of date of birth after entering into Government service by the Government servant. In the above decision a reference was made about the decision of Hon'ble Supreme Court in the case of Union of India vs. C. Ramaswamy and others reported in AIR 1997 SC 2055 wherein it was held that "except in cases where a clerical error has occurred does not entitle an officer to ask for change in the date of birth which is once recorded in his application and in the service book and the bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but by mistake or oversight a different date has been recorded." In the above decision the Hon'ble Supreme Court has also observed that the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of

birth. But in view of the fact that G.O.Ms.No.18 provides for alteration of date of birth the principle of estoppel would not arise. The Division Bench of Hon'ble High Court of Andhra Pradesh took similar view.

- e) the decision of Hon'ble Supreme Court in "State of U.P. and Another vs. Shiv Narain Upadhyaya reported in (2005)6 SCC 49 is not applicable in view of G.O.Ms.No.18 of 1978.
 - f) as contended by the learned counsel for the respondents and as per the decision of the Hon'ble Supreme Court and other Courts no Government servant can ask for change of date of birth at the fag end of service and no such request shall be entertained, but in this case there is no dispute that the applicant made request within one month from the date of joining the service for change of date of birth as contemplated in G.O.Ms.18 and no action was taken by the Government. As referred earlier there is no dispute that the applicant made such an application and there is no denial by respondents about the applicant making such an application, what all they speak is of non availability of the same.
 - g) generally anyone would think that for the benefit of continuing in service for more number of years a person would make a wrong claim of date of birth and such a presumption can be made in the present case also but when the rules provide for a Government servant to change his date of birth as contemplated in G.O.Ms.No. 18, 1978, the presumption is that there is possibility of wrong date of birth being entered in school records and service records initially and it can be corrected. Otherwise there was no necessity of providing facility like the one provided under G.O.Ms.18 of 1978. In fact there ought not have been any such facility and what all is entered in SSC register shall be treated as correct date of birth for all purposes, but once such facility is provided and applicant made an application for availing the same and when the concerned authority did not pass any orders within the time stipulated the odds would be in favour of the applicant.
 - h) as in the case of Smt. B. Udaya Lakshmi, also an IAS Officer, in the present case also the marriage card of the parents of the applicant would show that the marriage was on 10.06.1955 as such he could not have been born in 1954. In the case of Smt. B. Udaya Lakshmi an enquiry was conducted by the District Collector but in the present case no enquiry was made and the applicant is not responsible for the same as the respondents failed to conduct an enquiry and give a decision and rules provide for conducting enquiry within four months only.
 - i) it is significant that in the G.O. in which the request of Sri L. Premachandra Reddy was rejected there is no denial of the fact of the applicant giving declaration on 25.11.2978. This order of the Government cannot be upheld in the circumstances of the case and in the light of the order passed in the case of Smt. B. Udaya Lakshmi as taking a different decision in the case of the applicant in almost identical circumstances would amount to discrimination and as there was no possibility of interpreting the case of the applicant as pending as it was the Government that has failed to pass order within four months on account of which it has to be deemed that the matter was closed in favour of the applicant.
 - j) in all these circumstances the impugned order is liable to be Quashed and the same is accordingly Quashed.
6. The Hon'ble Central Administrative Tribunal, Hyderabad in its orders dated: 26.04.2013 vide reference third read above has finally directed as follows:

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- i. to pass favourable orders in favour of the applicant in view of clause (ii) of G.O.Ms.No.18 of 1978 declaring the date of birth of Sri L. Premachandra Reddy, IAS as 28.03.1956 instead of 10.06.1954.

or

- ii. to conduct an enquiry as contemplated under G.O.Ms.No.18, Finance & Planning (FIN. WING. FR.I) Department, Dated:09.01.1978 and pass orders. The same shall be completed within a period of four months from the date of communication of this order. In case within such time orders are not passed it shall be deemed that the declaration given by the applicant on 25.11.1978 has been accepted and action has to be taken to enter the date of birth of the applicant as 28.03.1956 in all appropriate service records of the applicant.

7. The State Government after carefully examining the issue in consultation with the Law Department and in compliance of the orders of Central Administrative Tribunal, Hyderabad Bench, Dated: 26.04.2013, decided to cause an enquiry into the facts duly appointing an Enquiry Officer and accordingly in the G.O. fourth read above, Sri V. Bhaskar, IAS, Special Chief Secretary to Government, Finance Department was appointed as Enquiry Officer. Sri V. Bhaskar, IAS, Special Chief Secretary, Finance, and Enquiry Officer has submitted his Enquiry Report vide reference fifth read above, wherein he framed three issues and gave his findings as follows:

Issues Framed:

Issue#1: Did Shri Premachandra Reddy submit a representation to his head office for correction of his date of birth as 28.03.1956 within one month of his joining service on 16.11.1978?

Issue#2: If so is the application submitted by Shri Premachandra Reddy to be dealt with under the rules at G.O.Ms.No.18 (A-3) or G.O.Ms.No.165 (A-5)? The present rules applicable are those at A-5 which embody the AP Employment (Recording and Alteration of Date of Birth) Rules 1984.

Issue#3: What is the date of birth of Shri L. Premachandra Reddy?

Findings on above issues:

Issue#1: Shri Premachandra Reddy submitted a representation to his head office for correction of his date of birth as 28.3.1956 within one month of his joining service on 16.11.1978.

Issue#2: Shri Premachandra Reddy's representation for correction of date of birth is to be dealt with under the rules issued in G.O.Ms.No.18 of 1978.

Issue#3: The date of birth of Sri L. Premachandra Reddy is 28.03.1956.

8. The Director (Services), Ministry of Personnel, Public Grievances and Pensions, department of Personnel & Training, Government of India, New Delhi in his letter vide reference sixth read above while observing that as per the order, dated: 26.04.2013, the direction of the Court has to be complied within 4 months from the date of communication of the order and the time period is almost over, further informed that in this regard it is assumed that the State Government of Andhra Pradesh might have taken action in compliance to the direction of the Hon'ble Tribunal. He, accordingly, requested the State Government to inform the DoPT about the status of the action taken by the State Government in regard to direction of the Hon'ble Tribunal.

9. After careful examination of the Enquiry Report, the State Government decided to accept and implement the above findings of the Enquiry Officer in pursuance of Central Administrative Tribunal Orders dated: 26.04.2013 in O.A. No.268/2013.

10. Government, accordingly direct that the date of birth of Sri L. Premachandra Reddy, IAS (1991) Secretary to Government (W&P), Finance Department be recorded in all appropriate Service records as 28.03.1956 instead of 10.06.1954, as recorded earlier.

11. The Pay and Accounts Officer, Hyderabad shall make necessary entries in all appropriate service records of Sri L. Premachandra Reddy, IAS, as above.

12. The Government of India shall be informed accordingly for appropriate action at their level.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.P.K.MOHANTY

CHIEF SECRETARY TO GOVERNMENT

To

Sri L. Premachandra Reddy, IAS.,
The Pay and Accounts Officer, Hyderabad.

Copy to:

The Commissioner for Cooperation & Registrar of Cooperative Societies, Hyd

The Principal Secretary to Government, A&C Department.

The Accountant General (A&E), A.P., Hyderabad.

The Secretary to Gol., DoP. &T., North Block, New Delhi, for appropriate action.

The Research Officer, Career Management Divn., Dept. of Pers. & Trg.,
Room No.215, North Block, New Delhi.

The Resident Commissioner, A.P. Bhavan, No.1, Ashoka Road, New Delhi.

The Prl. Secretaries/ Secretary/ Spl. Secretaries to C.M.

The P.S. to C.S./ Secretary (Poll) / Jt. Secretary (AIS).

The G.A. (Spl.B / SC.D / SC.E /SC.X / AR&T.II / Accom.B/ SB) Depts.
SF/SC.

//FORWARDED::BY ORDER//

SECTION OFFICER (SC)